

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TIMOTHY WILLIAMS,

Plaintiff,

Case No. 02-75133
Honorable Denise Page Hood

v.

WILLIAM OVERTON, et al.,

Defendants.

/

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Defendants' Motion for Summary Judgment filed October 13, 2009 [Doc. 62]. No response in opposition to the motion was filed.

Plaintiff Timothy Williams¹ filed the instant action 42 U.S.C. § 1983 against various Defendants on December 18, 2002. On April 15, 2003, Defendants filed a Motion to Dismiss the Complaint asserting a failure to exhaust administrative remedies, or, alternatively summary judgment based on the absence of a genuine issue of material fact, Eleventh Amendment immunity and qualified immunity. [Doc. No. 27] The Magistrate Judge issued a Report and Recommendation that Plaintiff failed to exhaust his administrative remedies and that Defendants were entitled to judgment on the merits of Plaintiff's claims. [Doc. No. 37] The Court adopted the Magistrate Judge's Report and Recommendation as to the lack of exhaustion issue only, dismissing the Complaint without prejudice without addressing the merits of the Complaint. [Doc. Nos. 41, 42] Plaintiff appealed the Court's ruling to the Sixth Circuit Court of Appeals which affirmed the

¹ According to Defendants, Plaintiff was discharged from the Michigan Department of Corrections on March 3, 2009.

Court's dismissal on July 25, 2005. [Doc. Nos. 53, 54] Plaintiff thereafter appealed to the United States Supreme Court, which reversed the Sixth Circuit's ruling. [Doc. No. 58] The Sixth Circuit remanded the matter to this Court for further proceedings.

On remand, Defendants filed the instant Motion for Summary Judgment arguing that the Court should now review the Magistrate Judge's Report and Recommendation addressing the merits of the Complaint. Defendants argue that they are entitled to judgment on the merits and to qualified immunity in their individual capacities, as recommended by the Magistrate Judge's July 22, 2003 Report and Recommendation. Given that the Magistrate Judge addressed the merits of the Complaint, the Court will now review that portion of the Report and Recommendation and the Objections filed by Plaintiff.

The standard of review by the district court when examining a Report and Recommendation is set forth in 28 U.S.C. § 636. This Court "shall make a de novo determination of those portions of the report or the specified proposed findings or recommendations to which an objection is made." 28 U.S.C. § 636(B)(1)(c). The Court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate." *Id.*

In order to preserve the right to appeal the Magistrate Judge's recommendation, Petitioner must file objections to the Report and Recommendation within ten (10) days² of service of the Report and Recommendation. Fed. R. Civ. P 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Secretary of Health and Human Servs.*, 932 F2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947

² As of December 1, 2009, Objections must be filed within fourteen (14) days of service of the Report and Recommendation.

(6th Cir. 1981).

Plaintiff timely filed Objections to the Magistrate Judge's Report and Recommendation. Upon review of the Objections, the Court finds they are without merit. The Court agrees with the Magistrate Judge that Plaintiff failed to submit evidence that any of the Defendants was personally involved with the decision to deny Plaintiff's surgery request. Defendants are entitled to summary judgment.

The Court also agrees with the Magistrate Judge that the record does not support that Defendants acted with deliberate indifference as to Plaintiff's medical needs or that the refusal to authorize surgery was discriminatory. Defendants are entitled to summary judgment on Plaintiff's claims under the Eighth and Fourteenth Amendments. The Court further agrees with the Magistrate Judge that even if Defendants' refusal to authorize surgery was unconstitutional, Plaintiff is barred from obtaining monetary relief pursuant to the doctrine of qualified immunity.

As to Plaintiff's claims under the Americans with Disabilities Act, the Rehabilitation Act or the Equal Protection Clause of the Fourteenth Amendment as to Defendants' refusal to place Plaintiff in a single cell, the Court agrees with the Magistrate Judge that Defendants are entitled to summary judgment on these issues since it appears Defendants attempted to accommodate Plaintiff's impairment. The related Eighth Amendment claim by Plaintiff regarding the double-celling issue must be dismissed as the Magistrate Judge recommended that there are no genuine issues of material fact on this record that double-celling is so risky to Plaintiff's well-being as to constitute a violation of the Eighth Amendment. The Court agrees with the Magistrate Judge that Defendants are entitled to qualified immunity as to Plaintiff's accommodation claims.

For the reasons set forth above,

IT IS ORDERED that Defendants' Motion for Summary Judgment (**Doc. No. 62, filed 10/13/2009**) is GRANTED.

IT IS FURTHER ORDERED that the Magistrate Judge's Report and Recommendation (**Doc. No. 37, filed 7/22/2003**) is ACCEPTED and ADOPTED as to the merits. Plaintiff's Objections (**Doc. No. 40, filed 9/25/2003**) as to the merits are OVERRULED.

IT IS FURTHER ORDERED that the Complaint and all Defendants are DISMISSED with prejudice.

S/Denise Page Hood
Denise Page Hood
United States District Judge

Dated: September 28, 2010

I hereby certify that a copy of the foregoing document was served upon Timothy Williams, c/o Marlene Williams, 12510 Wade, Detroit, Michigan 48213 and counsel of record on September 28, 2010, by electronic and/or ordinary mail.

S/William F. Lewis
Case Manager